

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**JONATHAN VILLAREAL,
individually and derivatively on behalf of
ZROBLACK LLC,
Plaintiff,**

v.

**JOHN SAENZ; MIGUEL VILLAREAL,
JR.; and GUNN, LEE & CAVE, P.C.;
Defendants.**

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No. 5:20-CV-00571-OG

**DEFENDANT JOHN SAENZ’S MOTION FOR LEAVE TO FILE SUR-REPLY
IN SUPPORT OF HIS RESPONSE IN OPPOSITION TO
PLAINTIFF’S FIRST AMENDED APPLICATION FOR SEIZURE, TEMPORARY
RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT
INJUNCTIVE RELIEF**

Defendant John Saenz (“Saenz”), through his undersigned counsel, hereby submits this Motion for Leave to File a Sur-Reply in Support of his Response in Opposition to Plaintiff’s First Amended Application for Seizure, Temporary Restraining Order, Preliminary Injunction, and Permanent Injunctive Relief. In support thereof, Saenz states as follows.

In his Reply to Defendant John Saenz’s Response in Opposition to Plaintiff’s First Amended Application for Seizure, Temporary Restraining Order, Preliminary Injunction, and Permanent Injunctive Relief (“Reply”), Plaintiff—for the first time—alleges new facts in support of his Application. *See* Reply at ¶¶ 3–9 (ECF No. 44) (alleging that Plaintiff “remotely accessed [Saenz’s] computer and uploaded the text files containing ZroBlack’s proprietary code to the Evernote application”). Plaintiff also—for the first time—attaches new purported evidence and four new exhibits, including a new six-page unsworn declaration of Plaintiff. *See* ECF No. 44-1–44-4. Where a party attempts to present new evidence at the reply stage, a sur-reply is warranted. *See Nat’l Liab. & Fire Ins. Co. v. Young*, No. 6:19-CV-031-H, 2020 U.S. Dist. LEXIS 199854, at

*3-6 (N.D. Tex. April 24, 2020) (noting that a sur-reply is appropriate when the movant raises new legal theories or attempts to present new evidence at the reply stage); *Johnson Controls v. A.M. Goodson Co.*, No. SA-04-CA-473-FB, 2006 U.S. Dist. LEXIS 103560, at *5 (W.D. Tex. March 9, 2006) (overruling objections to a sur-reply filed to address new evidence attached to a reply).

Because Plaintiff alleges new facts and presents new evidence for the first time in his Reply, a brief sur-reply is warranted for the limited purpose of responding to the new facts and evidence. Counsel for Saenz has conferred with counsel for Plaintiff about the relief requested herein. Although counsel for Plaintiff has not provided a final decision regarding whether Plaintiff is opposed, Saenz is filing this motion as opposed so that the Court may consider this motion at the hearing on April 13, 2021. Saenz respectfully requests that the Court grant leave to file the Sur-Reply in Support of his Response in Opposition to Plaintiff's First Amended Application for Seizure, Temporary Restraining Order, Preliminary Injunction, and Permanent Injunctive Relief attached hereto as Exhibit "A."

Respectfully submitted this 6th day of April 2021.

By: /s/ Ryan J. Sullivan
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Attorneys for John Saenz

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed with the Court on the 6th day of April 2020, and electronically served on the date reflected in the ECF system upon all parties registered to receive notice pursuant to the Court's CM/ECF system.

By: /s/ Ryan J. Sullivan
Ryan J. Sullivan